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IN THE

Supreme Court of the United States

OCTOBER TERM, 1938

No. 541

JOHN CARRIER and J. HARVEY CARPENTER, Guardian of John Carrier, Incompetent Veteran,
Petitioners,

v.

CURLEY BRYANT,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

RESPONDENT'S BRIEF

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In The

Supreme Court of the United States

October Term, 1938

No. 541

John Carrier and J. Harvey Carpenter, Guardian of John Carrier, Incompetent Veteran,
Petitioners,

v.

Curley Bryant,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

RESPONDENT'S BRIEF

OPINIONS BELOW.

The opinion of the Supreme Court of North Carolina (R. 8-16) is reported in 214 N. C. 174, 198 S. E. 651. The judgment of the Superior Court of Rutherford County, North Carolina (R. 5, 6, 7), is not separately reported, but is set forth in the report of the case in the Supreme Court of North Carolina (R. 9, 10), 214 N. C. 174-5. The connected case in which respondent recovered judgment against petitioner for Fifteen Hundred ($1,500.00) Dollars for criminal conversation, is reported in 214 N. C. 191, 198 S. E. 619 (R. 9).

STATEMENT OF THE CASE.

At the 1938 June-July Term of the Superior Court of Rutherford County, respondent obtained judgment against petitioner and his guardian, in the amount of Fifteen Hundred ($1,500.00) Dollars (R. 1, 3). (This judgment affirmed by the Supreme Court of North Carolina, 214 N. C., 191, 198 S. E., 619, 1938.)

Petitioner, a World War veteran, owns United States Government bonds in the principal amount of Eight Thousand Three Hundred and Fifty ($8,350.00) Dollars, and negotiable notes of the face value of Three Thousand Nine Hundred Ninety-Seven ($3,997.00) Dollars (R. 4, 5). These are listed by petitioner's guardian as "Investments" (R. 4) and were found by the trial court to be "investments" (R. 6). The trial court further found and it is undisputed, that these investments were made for petitioner by his guardian from the proceeds of moneys paid to him by the United States Government on account of his disability incurred and insurance in the World War (R. 6).

Respondent issued execution on his judgment against petitioner (R. 1, 3). Petitioner then moved for an injunction to stop respondent's seizure and sale under execution, on the ground that petitioner's bonds and notes were not subject to seizure and sale under Section 454a of Title 38, U. S. C. A. (R. 1, 2). The Superior Court of Rutherford County held that petitioner's bonds and notes were subject to seizure and sale under execution issued upon respondent's judgment (R. 5, 7). The Supreme Court of North Carolina affirmed this decision (R. 8-16).

QUESTION PRESENTED.

ARE INVESTMENTS OF A WORLD WAR VETERAN IN UNITED STATES BONDS AND NEGOTIABLE NOTES, PURCHASED WHOLLY OUT OF MONEYS PAID TO THE VETERAN BY THE UNITED STATES,

EXEMPT FROM AN EXECUTION ISSUED AT THE INSTANCE OF A JUDGMENT CREDITOR OF THE VETERAN, BY REASON OF THE PROVISIONS OF SECTION 454(a), TITLE 38, U. S. C., and SEC. 5, PUBLIC NO. 262, 74TH CONGRESS?

ARGUMENT.

Respondent rests his case for a negative answer to the above question on the following five propositions:

I. Under the plain terms of the statute (38 U. S. C. A. 454(a)) no exemption from the claims of creditors is granted to "investments" of the veteran.

II. Under the rules laid down by this court in *Trotter* v. *Tennessee,* 290 U. S. 354, and *Lawrence* v. *Shaw,* 300 U. S. 245, the investments of a World War veteran are not exempt from an execution issued at the instance of a judgment creditor of the veteran.

III. The language of the statute (38 U. S. C. A. 454(a)) is plain. There is, therefore, no room for resort to reports of legislative committees, or other extrinsic aids for the purpose of construing this Act.

IV. If the court is of the opinion that it is proper to resort to extrinsic aids, that is, to the judicial and legislative history of the statute, and to the canons of statutory construction, these support respondent's position that the investments of petitioner are subject to an execution issued on respondent's judgment.

V. "Payments of benefits" or moneys paid the veteran by the United States Government are all that the statute (38 U. S. C. A. 454(a)) intends to exempt and protect. These are amply protected both as to competent and incompetent veterans, by the decisions of this court and by laws of the State of North Carolina.

POINT I.

Under the Plain Terms of the Statute (38 U. S. C. A. 454(a)), No Exemption From the Claims of Creditors Is Granted to "Investments" of the Veteran.

The statute in question, 38 U. S. C. A. 454(a), Public No. 262, 74th Congress, Sec. 3, Act of August 12, 1935, 49 Stat. 607, and Public No. 262, 74th Congress, Sec. 5, 49 Stat., 607, reads:

> "*Payments of benefits* due or to become due shall not be assignable, and such *payments* made to, or on account of, a beneficiary *under any of the laws* relating to veterans, shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. Such provisions shall not *attach* to claims of the United States arising under such laws nor shall the exemption herein contained as to taxation *extend* to any property purchased in part or wholly out of such payments. Section 4747 of the Revised Statutes and Section 22 of the World War Veterans' Act, 1924, are hereby repealed, and all other Acts inconsistent herewith are hereby modified accordingly. The provisions of this section shall not be construed to prohibit the assignment by any person, to whom converted insurance shall be payable under Title III of the World War Veterans' Act, 1924, of his interest in such insurance to any other member of the permitted class of beneficiaries." (Emphasis supplied.)

Section 5, Public No. 262, 74th Congress.

> "That this Act shall take effect and be in force from and after its passage, but the provisions hereof shall apply to payments made heretofore under any of the Acts mentioned herein."

It will be noted that the exemption is granted in the first sentence of the statute which reads:

> "*Payments of benefits* due or to become due shall not be assignable, and such *payments* made to or on account of, a beneficiary under any of the laws relating to veterans, shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary." (Italics supplied.)

Under the plain language of the statute what is exempt? The words of the statutes answer "payments of benefits." If the language of the statute be clear it is conclusive. There can be no construction where there is nothing to construe. *U. S.* v. *Shreveport Grain & Elevator Company*, 287 U. S., 77, 53 Sup. Ct. 42, 77 Law Ed. 175, 178-9 (1932). What do the words "payments of benefits" mean? Obviously moneys paid to the veteran by the United States Government. "Payments of benefits" certainly do not include "investments." Neither do "payments of benefits" include business enterprises, embarked upon by the veteran, or property purchased by the veteran with the "payments of benefits." Hence it is clear that this first sentence does not exempt from execution investments, business enterprises, property purchased by veterans out of the "payments of benefits" or anything other than the "payments of benefits" themselves, which are exempt both before and after receipt by the beneficiary.

The next sentence of the statute reads:

> "Such provision shall not *attach* to the claims of the United States arising under such laws nor shall the exemption herein contained as to taxation *extend* to any property purchased in part or wholly out of such payments." (Italics supplied.)

The first clause of this second sentence excepts from the exemption granted in the first sentence "claims of the United States." Hence, "payments of benefits" either before or after receipt by the beneficiary are subject to the

claims of the United States. However, the first sentence did not exempt investments or property purchased with "payments of benefits" from the claims of creditors or from taxation. Hence the last clause of the second sentence "nor shall the exemption herein contained as to taxation, *extend* to any property purchased in part or wholly out of such payments" was not absolutely necessary. That Congress recognized this is clear from the terms of the statute. The statute says the exemption shall not *"attach"* to claims of the United States, and that it shall not *"extend"* as to taxation, to property purchased in part or wholly out of such payments.

A case directly in point as persuasive authority is *McCurry* v. *Peek*, 54 Ga. App. 341, 187 S. E. 854 (1938). The question involved in that case was whether land purchased with "payments of benefits" was exempt from seizure and sale at the instance of a creditor of the veteran, by virtue of the provisions of 38 U. S. C. A. 454(a), the same statute involved in the present case. The court held that the lands were not exempt from execution. At page 855, the court says:

> "What is exempt under this last Act. The 'payment of benefits,' and in this case the 'payment of benefits' was made in money, and the money even after its receipt by the beneficiary was exempt and the beneficiary might have used the money in any manner, for his own benefit, and to secure the comfort of his family, free from attacks of creditors. But when the beneficiary uses this money to buy real estate, the money paid as a benefit under the World War Veterans' Act (43 Stat. 607, as amended, 38 U. S. C. A., paragraph 421, et seq), loses its quality and identity, and is transmuted into real estate and there is an end to the exemption . . . In the first sentence of Section 3 of the Acts of 1935, there is an exemption from taxation, and an exemption from the claims of creditors, and there is a statement that the 'payment of benefits' 'shall not be liable to attachment, levy, or seizure by or under any legal or equi-

table process whatever, either before or after receipt by the beneficiary.' *There is no such exemption upon any other property, even though the property be purchased out of the 'payments of benefits.' It was therefore unnecessary to provide further in the next sentence of the 1935 Act, that the exemption therein contained shall not as to taxation extend to any other property purchased in part or wholly out of said payments. This last provision must have been incorporated therein as a matter of precaution to make matters doubly sure that such property purchased with 'benefit payments' was subject to taxation. In writing the second sentence of the 3rd section of the Act of 1935, the framers of the Act seem to have had in mind only the relationship of the government or governments to the 'benefit payments,' and were not attempting to deal with any other claims; and a failure to mention other claims does not signify anything with reference to them.*"

It is apparent that the first sentence of the statute exempts "payments of benefits" alone, and does not exempt investments, business enterprises, or property purchased in part or wholly out of "payments of benefits." No mention is made in this first sentence of anything but "payments of benefits." Since investments, business enterprises, and property purchased out of "payments of benefits" are not exempt from the claims of creditors or from taxation in the first sentence, no intention to include them in the exemption can be implied from the statement in the last clause of the second sentence to the effect that the exemption as to taxation shall not *extend* to property purchased with "payments of benefits." Thus it is seen that the maxim *expressio unis est exclusio alterius* can have no application to the present statute. With reference to this maxim this court, in *Ford* v. *United States*, 273 U. S. 593, 47 Sup. Ct. 531, 71 Law Ed. 793, 801 (1926), says:

"This maxim properly applies only when in the natural association of ideas in the mind of the reader that which is expressed is so set over by way of strong con-

trast to that which is omitted that the contrast enforces the affirmative inference that that which is omitted must be intended to have opposite and contrary treatment."

It is to be observed that in the first sentence of the statute no exemption has been granted to investments, business enterprises, or to property purchased in part or wholly out of "payments of benefit." These are not mentioned in the first sentence. Neither are they mentioned in the second sentence. Certainly no inference can be drawn from the fact that they were omitted from the second sentence to the effect that they were intended to be included in the first sentence. There is no contrast, the maxim *exclusio unis* can have no application.

It is submitted that under the terms of the statute no exemption is granted to investments. That the words of the statute are clear, that nowhere in the language of the statute can be found an exemption of the investments of the veteran from an execution issued at the instance of his creditors.

POINT II.

Under the Rules Laid Down by This Court in the Case of Trotter v. Tennessee, 290 U. S. 354, 78 L. Ed. 358 (1933), and Lawrence v. Shaw, 300 U. S. 245, 81 L. Ed. 623 (1936), the Investments of a World War Veteran Are Not Exempt From Execution Issued at the Instance of the Judgment Creditor of the Veteran.

The statute construed in the case of *Trotter* v. *Tennessee*, *supra*, (38 U. S. C. A. 454, Act of June 7, 1924, Chap. 320, Parag. 22, 43 Stat. 613), read as follows:

> "*Assignability and exempt status of compensation, insurance, and maintenance and support allowances.* The compensation, insurance, and maintenance and support allowance payable under Parts II, III, and IV,

respectively, shall not be assignable; shall not be subject to the claim of creditors of any person to whom an award is made under Parts II, III, or IV; *and shall be exempt from all taxation.* Such compensation, insurance and maintenance and support allowance shall be subject to any claims which the United States may have, under Parts II, III, IV, and V, against the person on whose account the compensation, insurance, or maintenance and support allowance is payable." (Italics ours.)

In *Trotter* v. *Tennessee* the facts were: A veteran in Tennessee purchased land with money received from the United States Government as compensation for his services in the World War. The State of Tennessee sought to tax this property. This court held that when the veteran converted his money into land the exemption came to an end and the land was subject to taxation. At 78 Law Ed., page 360, the court says:

"The moneys payable to this soldier were unquestionably exempt until they came into his hands or the hands of his guardian . . . We leave the question open whether the exemption remained in force while they continued in those hands or on deposit in a bank . . . Be that as it may, we think it very clear that there was an end to the exemption when they lost the quality of moneys, and were converted into land and buildings. The statute speaks of 'compensation, insurance, and maintenance and support allowance' payable to the veteran, and declares that these shall be exempt. We see no token of a purpose to extend a like immunity to permanent investments or the fruits of business enterprises . . .

"The judgment of the Supreme Court of Tennessee disallowing the exemption has support in other courts. . . . There are decisions to the contrary, but we are unable to approve them. *Rucker* v. *Merck,* 172 Ga. 793, 159 S. E. 501; *Atlanta* v *Stokes,* 175 Ga. 201, 165 S. E. 270; *Payne* v. *Jordon,* 36 Ga. App. 787, 138 S. E. 262.

"Our ruling in *Spicer* v. *Smith*, 288 U. S. 430, 77 L. Ed. 875, 53 Sup. Ct. 415, 84 A. L. R. 1525, leaves no room for the contention that the exemption is enlarged by reason of payment to the guardian instead of payment to the ward."

The statute construed in *Trotter* v. *Tennessee, supra* (38 U. S. C. A. 454), provided that "compensation, insurance, and maintenance and support allowance payable, . . . shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is made . . . ; shall be exempt from all taxation." Certainly the exemption from taxation was in no stronger language than the exemption from claims of creditors. It is submitted that the court held in *Trotter* v. *Tennessee, supra,* that when money was converted into land the exemption came to an end, that when the exemption came to an end it must necessarily follow that it came to an end for all purposes. In other words, that under the terms of the statute the money was exempt both from taxation and from the claims of creditors; but when the money was invested in land it no longer came within the terms of the statute and could no longer be exempt either from taxation or from the claims of creditors. It is submitted that there is no sound basis either from the words of the statute or from the decision of the court upon which to predicate a distinction between an exemption of the land from taxation and an exemption of the land from the claims of creditors. That this court intended to make no such distinction is further conclusively shown by the fact that one of the cases expressly disapproved by the court in *Trotter* v. *Tennessee, supra,* that is, the case of *Payne* v. *Jordon*, 36 Ga. App. 787, 138 S. E. 262, was a case in which the Georgia court held that a house and lot purchased by a veteran with moneys received from the United States Government could not be sold under execution at the instance of a judgment creditor of the veteran.

Lawrence v. *Shaw, supra,* was decided under the 1935 Act, (38 U. S. C. A. 454(a)). In this case the county of Hertford in North Carolina, attempted to levy a tax on money of a World War veteran on deposit in a bank. The moneys in question represented and in fact were collections from warrants or checks issued by the government to the veteran in payment of his compensation and insurance. This court held that under the provisions of the 1935 Act this tax could not be collected for the reason that the money while on deposit in the bank had not lost its character as "payments of benefits." The court held that "payments of benefits" were exempt both before and after receipt by the beneficiary as expressly provided in the 1935 Act, and reasoned that the beneficiary was not bound to carry the money around in his pocket but might deposit the same in a bank. This court cited the case of *Trotter* v. *Tennessee* with approval, and indicated that it would adhere to its decision in the *Trotter* case to the effect that when "payments of benefits" are invested they lose their character as such and the exemption contained in the statute then is at an end. At 81 Law Ed., page 626, Law Ed., the court says:

> "We think it clear that the provisions of the latter Act was intended to clarify the former rather than to change its import, and it was with that purpose that it was made retroactive."

The court continues, on page 627 Law Ed.:

> "The provision of the Act of 1935 that the exemption should not apply to property purchased out of moneys received from the government shows the intent to deny exemption to investments, as was ruled in the *Trotter* case . . .
>
> "In order to carry out the intent of the statute the avails of the government warrants or checks must be deemed exempt until they are expended or invested."

It is submitted that the court held and intended to hold that when the "payments of benefits" are invested the

exemption comes to an end. Further, that when it comes to an end it comes to an end for all purposes. That when "payments of benefits" are invested they lose their quality as such and are subject to taxation and to the claims of creditors. By the plain terms of the statute "payments of benefits" are exempt both from taxation and from claims of creditors. Likewise, the plain terms of the statute grant no exemption to investments, business enterprises, or property purchased in part or wholly out of "payments of benefits."

It is submitted that this is the rational of the decisions of this court in the cases of *Trotter* v. *Tenn., supra,* and *Lawrence* v. *Shaw, supra.*

POINT III.

The Language of the Statute (38 U. S. C. A. 454(a)) Is Plain. There Is, Therefore, No Room for Resort to Reports of Legislative Committees, or Other Extrinsic Aids for the Purpose of Construing This Act.

As heretofore observed, the statute involved in this case grants an exemption to "payments of benefits." Giving the words "payments of benefits" their usual and ordinary meaning they can mean nothing more than moneys paid to the veteran by the United States Government. No mention is made or exemption granted to investments in the statute. The statute involved in the present case, therefore, comes within the rule so often laid down by this court that the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain, the court will enforce the act as written. In such case the courts will not consider the reports of legislative committees or other extrinsic aids to construction for the reason that the duty of construction does not arise. In *U. S.* v. *Mo. & P. R. Co.*, 278 U. S. 269, 49 Sup. Ct. 133, 73 L. Ed. 322 (1928), at pages 376-7 L. Ed. the court says:

"The language of that provision is so clear and its meaning so plain that no difficulty attends its construction in this case. Adherence to its terms leads to nothing impossible or plainly unreasonable. We are therefore bound by the words employed, and are not at liberty to conjure up conditions to raise doubts in order that resort may be had to construction. It is elementary that where no ambiguity exists there is no room for construction. Inconvenience or hardships, if any, that result from following the statute as written, must be relieved by legislation.

* * * * * * *

Appellants seek to support the view for which they contend by some of the legislative history of the enactment and especially by explanatory statements made by Senator Elkins in connection with the report of the majority of the Senate committee submitting the bill for the act in question. Where doubts exist and construction is permissible, reports of the committees of Congress and statements by those in charge of the measure and other like extraneous matter may be taken into consideration to aid in the ascertainment of the true legislative intent. But where the language of an enactment is clear and construction according to its terms does not lead to absurd or impractical consequences, the words employed are to be taken as the final expression of the meaning intended. And in such cases legislative history may not be used to support a construction that adds to or takes from the significance of the words employed."

In *United States* v. *Shreveport Grain & Elevator Co.*, 287 U. S. 77, 53 Sup. Ct. 42, 77 L. Ed. 175 (1932), at pages 178-9 L. Ed., this court says:

"Our attention is called to the fact that the House Committee on Interstate and Foreign Commerce, in reporting the bill which afterwards became the Act in question (H. R. 850, 62d Cong., 2nd Sess., pp. 2-4) agreed with the view that the authority to make rules and regulations was confined to the establishment of tolerances and exemptions; and that the Senate com-

mittee on Manufacturers (S. R. 1216, 62d Cong., 3rd Sess., pp. 2-4), reported to the same effect. In proper cases, such reports are given consideration in determining the meaning of a statute, but only where that meaning is doubtful. They cannot be resorted to for the purpose of construing a statute contrary to the natural import of its terms . . . like other extrinsic aids to construction, their use is 'to solve, but not to create, an ambiguity' . . . If the language be clear it is conclusive. There can be no construction where there is nothing to construe." *Caminneti* v. *U. S.*, 242 U. S. 470, 37 S. Ct. 192, 61 L. Ed. 442 (1916).

Standard Fashion Company v. *Magrane-Houston Co.*, 258 U. S. 346, 42 Sup. Ct. 360, 66 L. Ed. 653, 657 (1921).

Van Camp & Sons v. *American Can Company*, 278 U. S. 245, 49 Sup. Ct. 112, 73 L. Ed. 311 (1928).

Petitioner refers at length in his brief to the reports of the sub-committee of the House, and to the reports of the Finance Committee of the Senate. It is submitted that the language of the statute involved in the present case (38 U. S. C. A. 454(a)) is clear, that no duty to construe the statute arises, and that therefore the reports of the sub-committee of the House and Finance Committee of the Senate have no bearing on the question to be determined in the instant case.

POINT IV.

If the Court Is of the Opinion That It Is Proper to Resort to Extrinsic Aids, That Is, to the Judicial and Legislative History of the Statute, and to the Canons of Statutory Construction, These Support Respondent's Position That the Investments of the Petitioner Are Subject to an Execution Issued on Respondent's Judgment.

(1) The judicial and legislative history of Title 38 U. S. C. A., Sec. 454(a), show that under its terms the investments of petitioner are intended to be subject to execution issued upon respondent's judgment.

R. S. Sec. 4747, 38 U. S. C. A. 54, Act of March 3, 1873, C. 234, Paragraph 33, 17 Stat. 576, was in force from the date of its enactment in 1873, until it was repealed by the Act of 1935, 38 U. S. C. A. 454(a) Pub. No. 262, 74th Cong., Secs. 3 and 5, Act of Aug. 12, 1935, 49 Stat. 607. R. S. 4747 read:

> "54. Attachment, levy, or seizure of moneys due pensioners prohibited. No sum of money due, or to become due, to any pensioner, shall be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, whether the same remains with the Pension Office, or any officer or agent thereof, or is in course of transmission to the pensioner entitled thereto, but shall inure wholly to the benefit of such pensioner."

R. S. 4747 applied to moneys due a pensioner, and was construed by this court in *McIntosh* v. *Aubrey*, 185 U. S. 122, 46 L. Ed. 834, 22 Sup. Ct. 561 (1901). In the *McIntosh* case this court held that real estate purchased with pension money was subject to execution and sale at the instance of a judgment creditor of the pensioner. The court says, at pages 837-8 L. Ed.:

> "The language of the section of itself seems to present no difficulty, and if doubt arises at all it is only on account of the decisions of courts whose opinions are always entitled to respect. *Crow* v. *Brown*, 81 Iowa 344, 11 L. R. A. 110, 46 N. W. 993; *Yates County Nat. Bank* v. *Carpenter*, 119 N. Y. 550, 7 L. R. A. 557, 23 N. E. 1108. But, notwithstanding, we think the purpose of Congress is clearly expressed. It is not that pension money shall be exempt from attachment in all of its situations and transmutations. It is only to be exempt in one situation, to-wit, when 'Due or to become due.' From that situation the pension money of plaintiff in error had departed.
>
> "The simplicity and directness of the statute are impaired by attempts to explain it by the use of other

terms than its own. That money received is not money due, and that real estate is not money at all would seem, if real distinctions be regarded, as obvious enough, without explanation."

Hence from 1901, the date of the *McIntosh* case, until the enactment of the 1935 Act, as to pensions paid by the United States Government to pensioners, there was no question but that property purchased with the pension money was subject to execution at the instance of the creditors of the pensioner.

On June 7, 1924, Sec. 454, Title 38 U. S. C. A. (Act of June 7, 1924, C. 320, Paragraph 22, 43 Stat. 613) was enacted. This section was a part of the Act entitled "World War Veterans' Act, 1924," 38 U. S. C. A. 421, Act of June 7, 1924, C. 320, Paragraph 1, 43 Stat. 607, and by its terms applied only to "compensation, insurance, and maintenance and support allowances payable to World War veterans under Parts II, III, and IV of said Act." The state courts did not agree on the question of whether permanent investments of the World War veteran were exempt from execution under the provisions of Sec. 454, 38 U. S. C. A. The Supreme Court of North Carolina, in *State Hospital* v. *Bank*, 207 N. C. 697, 178 S. E. 487 (1934), held that investments of the veteran were not exempt from the claims of creditors. This court denied certiorari. 295 U. S. 761, 55 Sup. Ct. 921, 79 L. Ed. 1704. In *Payne* v. *Jordon*, 36 Ga. App. 787, 138 S. E. 262 (1927), the Georgia court held that property of a World War veteran purchased with moneys paid him by the United States was not subject to the claims of creditors. As pointed out in petitioner's brief, some other state courts followed the decision in *Payne* v. *Jordon, supra.* However, the case of *Payne* v. *Jordon, supra,* was expressly disapproved in *Trotter* v. *Tennessee, supra,* and therefore cases of like effect were also necessarily disapproved. *Trotter* v. *Tennessee, supra,* was decided in 1933, and construed the 1924 Act (38 U. S. C. A. 454). As hereinabove pointed out, respondent submits that under the holding in the *Trotter*

case, investments of a World War veteran would be subject to the claims of his creditors.

When the sub-committee of the House came to consider the amendment of R. S. 4747, and 38 U. S. C. A. 454, some benefits paid to veterans were not covered by the provisions of either of these statutes. The report of the sub-committee of the Committee on World War Veterans' Legislation of the House of Representatives, made under authority of H. R. 409, 73rd Cong., page 75, submitted Jan. 8, 1935, reads in part:

> "There is a need for amended legislation to bring within the terms of existing laws, all benefits paid to fiduciaries of veterans under the various pension laws, some of which are not now covered."

This same report reads in part, on page 78:

> "There is need for amendatory legislation to replace Sec. 22, World War Veterans' Act; Sec. 454, Title 38 U. S. C., and Sec. 4747, Revised Statutes, in order that the same protection, immunity, and exemption may be provided for all *benefits* (Italics ours)."

It is apparent that when the sub-committee of the House came to consider amendments to R. S. 4747, and to Sec. 454, 38 U. S. C. A., it was considering one statute (R. S. 4747) under which this court had held that property purchased with pension money was not exempt from the claims of creditors (*McIntosh* v. *Aubrey, supra*); one statute (Sec. 454, Title 38 U. S. C.) in which the state courts had been divided on the question of whether investments of a veteran were subject to claims of creditors, and under which this court had expressly disapproved in (*Trotter* v. *Tennessee, supra*) the decision of a state court (*Payne* v. *Jordon, supra*) which held that property purchased with "payments of benefits" was exempt from the claims of creditors. The sub-committee was also considering various other payments to veterans which were not included in either R. S. 4747

or Sec. 454, Title 38 U. S. C. In addition, the sub-committee was aware that it was proposing legislation to affect eighty-two thousand estates of incompetent veterans (Hearings before the Committee on World War Veterans' Legislation, and Sub-Committee on Hospitals, H. R. 409, 73rd Cong., Part I, page 18 quoted in the Appendix hereto), which involved estates amounting in round figures to $128,000,000.00 of which $102,000,000.00 was invested. (The Report of Sub-Committee of the Committee on World War Veterans' Legislation of the House of Representatives, under H. R. 409, 73rd Cong., page 63, quoted in the Appendix hereto).

In view of these facts, the sub-committee states on page 79 of its report:

> "Several recommendations have been received by this sub-committee from the Chief Attorneys of the Veterans' Administration that this statute should be amended and the regulations of the administration provide for strict application.
>
> "It is therefore proposed that the following section be enacted to replace Sec. 22, World War Veterans' Act, Sec. 454, Title 38 U. S. C., and Sec. 4747, R. S.:
>
> "Sec. 3. *Payments of benefits due* or to become due shall not be assignable, and *such payments* made to, or on account of, a beneficiary under any of the laws relating to veterans shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. Such provisions shall not *attach* to claims of the United States arising under such laws nor shall the exemption herein contained as to taxation *extend* to any property purchased in part or wholly out of such payments. Sections 4747, Revised Statutes, and 22 World War Veterans' Act, are repealed, and all other Acts inconsistent herewith are modified accordingly.
>
> "The provisions of this section shall not be construed to prohibit the assignment by any person to whom converted insurance shall be payable under Title III of the World War Veterans' Act of his interest in such

insurance to any other member of the permitted class of beneficiaries." (Italics ours.)

It is submitted that had the sub-committee intended to change the rule laid down by this court in *McIntosh* v. *Aubrey, supra,* and exempt from the claims of creditors $102,000,000.00 invested for the various incompetent veterans, as well as all investments made by competent veterans, it would have said so in language so plain that no one could misunderstand it. It is further submitted that when the sub-committee proposed a statute exempting "benefit payments" which statute did not mention investments, the sub-committee clearly did not intend to change the rule laid down in *McIntosh* v. *Aubrey, supra,* and *Trotter* v. *Tenn., supra,* and did not intend to exempt investments of veterans from the claims of the veterans' creditors.

The report of the Finance Committee of the Senate, No. 1072, S. 74th Cong., p. 67, reads in part as follows:

"(11) The next change is Section 3 of the bill which proposes a new section to replace Section 22 of the World War Veterans' Act, 1924, and Section 4747 of the Revised Statutes. The purpose of this new section is two-fold: first, to make uniform the law with respect to exemptions granted beneficiaries, and second to clarify the language with respect to such exemptions. Under the present laws, as interpreted by the Secretary of the Treasury, beneficiaries receiving payments under the World War Veterans' Act and amendments thereto do not have to include such payments in their Federal income-tax returns because of the exemption contained in Section 22; whereas those receiving pensions have to include such pensions in their income-tax returns; and, unless otherwise exempt, must pay a tax thereon.

"The two sections have also been construed differently not only by the highest appellate courts of the states, but also by the Supreme Court of the United States. *For example, it has been held that 'payments due or to become due' of Section 4747, Revised Statutes,*

refer to the payments before they are made, and that the exemptions of said section do not extend to payments made to a beneficiary or to the guardian of a beneficiary. (See *McIntosh* v. *Aubrey* (185 U. S. 122, 46 L. Ed. 834).) Some state supreme courts have held that the language of Section 22 should be construed similarly. (See *State ex rel Smith* v. *Bd. of Com. of Shawnee Co.* (132 Kan. 233, 294 Pac. 915)), and although the Supreme Court of the United States denied certiorari in the case just cited it has not passed directly upon that specific question, but has indicated that it would not follow this doctrine with respect to any exemption other than that relating to taxation. (See *Trotter* v. *Tenn.* (178 L. Ed. 128) and *Pagel* v. *Pagel* (78 L. Ed. 627).) The language of the proposed amendatory section will, it is believed, *clarify these disputed points and will place the law in conformity with the decisions of the Supreme Court on the subject.* It will make the law uniform as to all beneficiaries." (Italics supplied.)

It will be noted that this report states that the provisions of Section 4747 did not apply to *payments* made to a beneficiary or to the guardian of a beneficiary. Nothing is said about investments. It will also be noted that this report states that the statute in question will clarify the disputed points and will *place the law in conformity with the decisions of the Supreme Court*, that is, in accordance with the decisions of this court in *McIntosh* v. *Aubrey*, *supra*, which held that property purchased with pension money was not exempt from claims of creditors, and in accordance with *Trotter* v. *Tenn.*, *supra*, which as respondent submits, also indicates that investments of a veteran are subject to the claims of his creditors. Nowhere in this report of the Senate Committee are investments mentioned, nowhere does the report state that the Act will change the rule laid down in *McIntosh* v. *Aubrey*, *supra*. If the Senate Committee had contemplated any such change it would have said so.

Petitioner therefore submits that the judicial and legislative history of Sec. 454(a), 38 U. S. C., clearly shows that

it was understood and intended that investments of a veteran were to be subject to the claims of his creditors.

(2) The statute involved in the present case (38 U. S. C. 454(a)) is in derogation of the creditors' common law right to subject the property of the debtor to sale under execution to satisfy the debt. Therefore the statute cannot be extended beyond the plain words used.

Under the common law every court had the power to enforce its decrees and judgments by execution, or other proper process. This power is inherent in every court, for otherwise no court could function. A court which could not enforce its decrees, orders and judgments by execution or other final process would be a farce. Under the common law every creditor had a right to the issuance of the final process of the court to enforce his money judgment against the judgment debtor, and to subject the property of the judgment debtor to sale under execution to satisfy the judgment. Section 454(a), Title 38 U. S. C., limits and abridges this common law right and therefore cannot be extended beyond its plain terms. This court said in *The Bank of Columbia* v. *Oakley*, 4 Wheat. 235, 4 L. Ed. 559 (1819), at page 561 Law Ed.:

> "We readily admit that the provisions of this law are in derogation of the ordinary principles of private rights, and, as such, must be subjected to a strict construction, and under the influence of this admission, will proceed to consider the several questions which the case presents."

In *Brunswick* v. *National Bank*, 192 U. S. 386, 24 Sup. Ct., 315, 48 L. Ed. 491 (1903), at page 493 L. Ed., this court says:

> "This additional liability of a stockholder depends on the terms of the statute creating it, and as it is in derogation of the common law, the statute cannot be extended beyond the words used."

In *Texas & P. R. Co.* v. *Abilene Cotton Oil Company*, 204 U. S. 426, 27 Sup. Ct. 350, 51 L. Ed. 553 (1906), at page 557 Law Ed. this court says:

> "In testing the correctness of this proposition we concede that we must be guided by the principle that repeals by implication are not favored, and, indeed, that a statute will not be construed as taking away a common law right existing at the date of its enactment, unless that result is imperatively required; that is to say, unless it be found that the pre-existing right is so repugnant to the statute that the survival of such right would in effect deprive the subsequent statute of its efficacy; in other words, render its provisions nugatory."

Respondent submits that no mention is made of investments in the statute in question, that the statute grants no exemption to investments, and that therefore, under the rules laid down above, the statute cannot be extended beyond its plain terms to include investments.

POINT V.

"Payments of Benefits" or Moneys Paid the Veteran by the United States Government Are All That the Statute (38 U. S. C. A. 454(a)) Intends to Exempt and Protect. These Are Amply Protected Both as to Competent and Incompetent Veterans, by Decisions of This Court and by Laws of the State of North Carolina.

(1) Incompetent veterans.

Petitioner on pages 27-31 in his brief, argues that in North Carolina protection which is extended to a competent veteran is denied to an incompetent veteran, and cites Michie's Code of N. C., Chap. 40-a, Sec. 2202 (13). This section (as amended is a part of Chapter 33, Pub. Laws of North Carolina, 1929. Section 21 of this chapter reads:

"That this Act shall be in force and effect from and after its ratification.

"Ratified this, the 18th day of Feb., A. D., 1929."

This entire chapter, that is, Chapter 33, Pub. Laws of North Carolina, 1929, was enacted by North Carolina legislature, at the instance of the Veterans' Administration. Hearings before the Committee on World War Veterans' Legislation and Sub-Committee on Hospitals, House of Representatives, 73rd Cong., under H. R. 409, Part I; pages 3 to 4, May 31, June 1, 4, 5, 6, 7, 9, 1934. On page 3-4 the reports of the hearings read:

"GENERAL HINES: . . . We found in the inception of our work that many states did not have what we afterwards developed through a uniform guardianship law, and that is, a uniform practice in dealing with those estates. We undertook, with the assistance of the American Bar Association, to have a uniform guardianship law drawn up and introduced in the state legislatures. That uniform guardianship law has been adopted by thirty-five states of the Union, and ten other states have laws which are just as effective as the uniform guardianship law."

"THE CHAIRMAN: Will you put in the record at this point a statement showing the thirty-five states that have adopted that uniform guardianship law? . . .

"GENERAL HINES: I will be glad to do so . . .

"The uniform guardianship law has been adopted by the following thirty-five states . . . North Carolina, Feb. 18, 1929."

It is apparent that Michie's North Carolina Code, Chapter 40-a, which includes Section 2202 (13), cited by petitioner, was drawn up and its enactment procured by the Veterans' Administration, who, above all others, have the interest of the veteran at heart. It is also apparent that this statute constitutes no attempt on the part of the State of North Carolina to deny protection to an incompetent veteran which is extended to a competent veteran. It is

only reasonable to assume that this statute was drawn up and its enactment secured by the Veterans' Administration for the purpose of protecting the interest of the incompetent veterans. It is also reasonable to assume that it was drawn up and its enactment secured with a full knowledge of the other laws of the State of North Carolina relating to incompetents, and with the full knowledge that this Act, together with the other laws in force in North Carolina, would be more than ample to secure to incompetent veterans the money necessary to support them and their families. In this the Veterans' Administration was entirely correct. In North Carolina the property of an incompetent or insane person, in whatever shape, or form, cannot be reached for the payment of the debts of such insane person unless and until a sufficient amount of the incompetent's property is first set aside for the support and maintenance of the incompetent and the dependent members of his family. This has long been the law in North Carolina, and is clearly held in *Lemly* v. *Ellis*, 146 N. C. 221, 59 S. E. 683 (1907). In this case plaintiff brought an action for the breach of a warranty arising out of a sale of real property from dependant to plaintiff in the year 1900. When the action was brought the defendant was found to be insane and a guardian ad litem was appointed for him. Plaintiff obtained a money judgment for damages, and the court held that before the judgment could be satisfied, a sufficient amount of defendant's property must be set aside to provide for the support and maintenance of defendant and his family. The court further held that if all of defendant's property was necessary for the support of defendant and his family, then nothing could be applied on the payment of plaintiff's judgment. The court says, at pages 222-4, N. C.:

> "Defendant further excepts to the refusal of the court below to set aside a portion of the attached property for the support of defendant and his family, it having been made to appear that defendant is now in-

sane and has a wife and infant child resident in the state, and there being evidence tending to show that defendant is insolvent. 'It is an established principle with us that the property of an insane person, certainly where same is in custody of the court, will not be applied to the payment of his general indebtedness, as distinguished from claims for his present maintenance, until a sufficient fund is set aside for the support of the lunatic and his family, including his wife and infant children, who are a part of his household. *In re Latham*, 39 N. C. 231; *Adams* v. *Thomas*, 81 N. C. 296. In *Latham's* case the doctrine and the reason upon which it rests is stated by *Daniel, J.*, as follows: 'But the better opinion is, that the said statute was not introductive of any new right, but was only declaratory of the common law. *Beverly's* case, 4 Steph. 126, 127; Ves. Jr. 71 Bac. Abr., title Idiots and Lunatics, C., Shelford, 12. And we take it that the King, as *parens patriae*, by the common law, had the protection of all his subjects, and that in a more particular manner he is to take care of all those who, by reason of their imbecility and want of understanding, are incapable of taking care of themselves. Bac. Abr. Idiots and Lun. C. All the lunatic's estate has been converted into money, and only the sum of $942.14 is now within the reach of this court. We think that this fund must be retained by the committee, not to pay his balance or the debts of any of the creditors, but for the purpose of maintaining the lunatic and his wife and infant children. That the court must reserve a sufficient maintenance for the lunatic before making an order for payment of debts, or allowing to the committee sums already applied by him to that purpose, is clear from the nature of the jurisdiction in lunacy, as well as from the decisions. *In Ex parte Hastings*, 14 Ves. 182, *Lord Eldon* said he could not pay a lunatic's debts and leave him destitute, but must reserve a sufficient maintenance for him; and in *Tally* v. *Tally*, 22 N. C. 385, that case is cited with approbation by this court.''

This rule applies even though the debt sought to be collected was incurred before the person in question became

insane. This is squarely held in *Read* v. *Turner,* 200 N. C. 773, 158 S. E. 475 (1931). In *Read* v. *Turner* the debts sought to be collected were incurred before the person in question became insane. At page 778, N. C., the court says:

> "We quote with approval the language of *Dillard, J.,* in *Adams* v. *Thomas,* 81 N. C. 296, as follows:
>
> " 'Property of a lunatic put into the hands of a committee is to be regarded as in custodia legis, and no creditor can reach it for a pre-existing debt, except through the order of the Superior Court, and that order is never made until first a sufficiency is ascertained and set apart for his own maintenance and that of his family, if minors, and this administration of the estate is based on the idea that the sovereign owes the duty to a person thus unfortunate to devote his property primarily to his maintenance and to protect him against his existing creditors, except in subordination thereto.' "
>
> *Reynolds* v. *Reynolds,* 208 N. C. 254, 265; 180 S. E. 80 (1935).
>
> *Adams* v. *Thomas,* 81 N. C. 296 (1879).
>
> *Blake* v. *Respass,* 77 N. C. 193 (1877).

Under the decision of this court in *Lawrence* v. *Shaw, supra,* the money of an insane veteran while on deposit in a bank is exempt from taxation and from the claims of creditors. Even under the North Carolina statute, cited by petitioner (Michie's N. C. Code, Sec. 2202 (13)), it is submitted that the guardian of an incompetent veteran could keep on deposit at all times sufficient funds to take care of the veteran and his family. No duty to invest would arise until the guardian had on hand more than sufficient funds to take care of the incompetent veteran. However, assuming that the guardian has on hand more than a sufficient amount of money to provide for the veteran under the terms of the North Carolina statute (Michie's N. C. Code, Chap. 40-a, Sec. 2202 (13)) it would then become his duty to invest the same. Under the North Carolina cases hereinabove cited, no matter how much the guardian had invested, or in

what he had invested it, no creditor could touch these investments until the Superior Court of North Carolina had first inquired into the amount of property owned by the incompetent, and set aside enough of his property to care for the incompetent himself, and the dependent members of his family. Where is the danger that some creditor of an incompetent veteran will levy on the side of meat or the other necessities of life which the veteran or his guardian have purchased, and leave the veteran or his family to starve? It is only where there is a surplus, more than enough to care for the veteran and his family, that creditors can be paid. It is submitted that there is no good reason why an incompetent veteran, who has a surplus in investments over and above that necessary for the support of himself and his family, should not pay his just and honest debts.

It is to be noted in the present case that petitioner and his guardian do not even contend that petitioner does not have property amply sufficient to take care of petitioner, and also to pay respondent's judgment in full. Nowhere is it suggested that payment of respondent's judgment will deprive petitioner of any of the necessities of life or in any way interfere with the proper care, support, and maintenance of petitioner. This being so, why should not respondent's judgment be paid?

Petitioner makes no distinction between claims of creditors of the veteran, but contends that the investments of the veteran are exempt from *all* of the claims of his creditors. If petitioner's contention is correct, a person who had taken an incompetent veteran into his home, clothed him and cared for him, furnished the veteran with food, clothing, and all of the other necessities of life, could not collect his claim for such services against the incompetent veteran, even though the veteran had more than enough property to take care of himself and his family and had a surplus of investments totalling many thousands of dollars. Surely Congress could have intended no such result.

(2) Competent veterans.

As pointed out in petitioner's brief (pages 27, 28) a competent veteran could keep all of the money received by him on deposit in a bank, subject to his check, and the money would not be subject to taxation or claims of his creditors. Surely, this in itself is a sufficient protection to any competent veteran. The competent veteran is certainly in no danger of starving or freezing as long as his money, received from the United States Government, is not subject to the claims of his creditors. In addition, the competent veteran (as well as the incompetent veteran) in North Carolina, has a $500.00 personal property exemption and a $1,000.00 real estate and homestead exemption. Article 10, Sec. 1, 2, 3, Constitution of North Carolina (set out fully in the appendix hereto). It is submitted that the competent veteran under the decision of this court in *Lawrence* v. *Shaw, supra*, and under the provisions of the North Carolina Constitution hereinabove cited, is in no danger of starving or freezing, or of having any of the necessities of life taken away from him by a creditor.

CONCLUSION.

The very term "investments" indicates that the veteran has a surplus over and above that needed for food and clothing and for the necessities of life, otherwise, there would be nothing to invest. It is submitted that there is no good reason why this surplus should be exempt from execution and from the just claims of the veterans' creditors. Surely the just debts of the veteran should stand, in the eyes of the law, as nearly as possible on an equal footing with the just debts of every other person.

Respondent therefore respectfully submits that for the reasons hereinabove set forth, the judgment of the Supreme Court of North Carolina should be affirmed.

FREDERICK D. HAMRICK,
Attorney for Respondent.

Of Counsel:
FREDERICK D. HAMRICK, JR.

APPENDIX.

NORTH CAROLINA CONSTITUTION

ARTICLE X

Homesteads and Exemptions

Section 1. *Exemptions of personal property.* The personal property of any resident of this state, to the value of five hundred dollars, to be selected by such resident, shall be and is hereby exempted from sale under execution or other final process of any court, issued for the collection of any debt.

Section 2. *Homestead.* Every homestead, and the dwellings and buildings used therewith, not exceeding in value one thousand dollars, to be selected by the owner thereof, or in lieu thereof, at the option of the owner, any lot in a city, town, or village with the dwelling and buildings used thereon, owned and occupied by any resident of this state, and not exceeding the value of one thousand dollars, shall be exempt from sale under execution or other final process obtained on any debt. But no property shall be exempt from sale for taxes or for payment of obligations contracted for the purchase of said premises.

Section 3. *Homestead exemption from debt.* The homestead, after the death of the owner thereof, shall be exempt from the payment of any debt during the minority of his children, or any of them.

Hearings before the Committee on World War Veterans' Legislation, and Sub-Committee on Hospitals, H. R. 409, 73rd Cong., Part I, page 18:

"THE CHAIRMAN: General, let me ask you one more question: I understood you to say that there were 82,000 of those guardianships?

"GENERAL HINES: That is right."

Report of the sub-committee of the Committee on World War Veterans' Legislation, of the House of Representatives, under H. R. 409, 73rd Cong., page 63:

"The following will show the total amount of estates involved, the amount invested legally, the amount invested illegally, deposits in banking institutions, and total amount lost on investments for the fiscal year ending June 30, 1934, as shown by the consolidated report of the Veterans' Administration:

Amount of estates	$128,948,267.17
Estates invested	102,573,024.57"

SUPREME COURT OF THE UNITED STATES.

No. 541.—October Term, 1938.

John Carrier and J. Harvey Carpenter, Guardian of John Carrier; Incompetent Veteran, Petitioners,
vs.
Curley Bryant.

On Writ of Certiorari to the Supreme Court of the State of North Carolina.

[April 17, 1939.]

Mr. Justice McReynolds delivered the opinion of the Court.

The Supreme Court, North Carolina, ruled that negotiable notes and United States bonds purchased, and held as investments, for an incompetent World War veteran by his guardian out of "payments of benefits" authorized under laws relating to such veterans, were subject to execution upon a judgment against the incompetent. Petitioners challenge that view and claim immunity under section 3 Act August 12, 1935 (c. 510, 49 Stat. 607, 609; 38 U. S. C. A. sec. 454a).

"Sec. 3. Payments of benefits due or to become due shall not be assignable, and such payments made to, or on account of, a beneficiary under any of the laws relating to veterans shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. Such provisions shall not attach to claims of the United States arising under such laws, nor shall the exemption herein contained as to taxation extend to any property purchased in part or wholly out of such payments. Section 4747 of the Revised Statutes and section 22 of the World War Veterans' Act, 1924, are hereby repealed, and all other Acts inconsistent herewith are hereby modified accordingly. The provisions of this section shall not be construed to prohibit the assignment by any person, to whom converted insurance shall be payable under title III of the World War Veterans' Act, 1924, of his interest in such insurance to any other member of the permitted class of beneficiaries.

"Sec. 5. That this Act shall take effect and be in force from and after its passage, but the provisions hereof shall apply to payments made heretofore under any of the Acts mentioned herein."

The conclusion below is supported by *McCurry* v. *Peek*, (1936) 54 Georgia App. 341, 187 S. E. 854, the only other opinion squarely upon the point here involved which has been called to our attention.

The language of section three, although not entirely felicitous, conflicts with the petitioners' insistence.

The first sentence grants exemption from taxation, claims of creditors, attachment, levy or seizure under any legal process whatever. The things exempted are "payments of benefits" due or to become due either before or after receipt by the beneficiary.

Investments purchased with money received in settlement of benefits are not such payments due or to become due. Accordingly, giving the words employed their ordinary meaning, the notes and bonds in question are not exempted by the first sentence in section three. It left them, like other property, subject to taxation, claims of creditors, and legal process.

The second sentence in the section clearly recognizes the distinction between benefit payments and property purchased with money therefrom. It declares the exemption provisions in the first sentence shall not attach to claims of the United States; also that exemption from taxation shall not extend to property purchased out of benefit payments. Nothing is said concerning claims of creditors. Nevertheless, petitioners seem to maintain immunity from these must be inferred. But a mere declaration that investments always subject to taxation shall not enjoy exemption therefrom affords no basis for holding them free from claims of creditors. Although the first sentence extended no immunity to investments, apparently out of abundant caution, the second declared them subject to taxation.

We find nothing in the history or supposed purpose of the enactment adequate to support a construction not in accord with the ordinary import of the words employed.

Under *Spicer* v. *Smith*, (1933) 288 U. S. 430, 434, payment of benefits to the guardian vested title in the ward. The exemptions of the statute would not be different if the ward had personally received the payments.

Section 4747 Revised Statutes, Act March 3, 1873 (38 U. S. C. A. sec. 54), remained in force until repealed by Act August 12, 1935. It provided—

"No sum of money due, or to become due, to any pensioner, shall be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, whether the same remains with the

Pension-Office, or any officer or agent thereof, or is in course of transmission to the pensioner entitled thereto, but shall inure wholly to the benefit of such pensioner."

This section was considered in *McIntosh* v. *Aubrey*, (1902) 185 U. S. 122, 124, where it was unsuccessfully claimed that property purchased with pension money could not be seized under an execution. It was there said—

"The language of the section of itself seems to present no difficulty, and if doubt arises at all it is only on account of the decisions of courts whose opinions are always entitled to respect. . . . But notwithstanding, we think the purpose of Congress is clearly expressed. It is not that pension money shall be exempt from attachment in all of its situations and transmutations. It is only to be exempt in one situation, to wit, when 'due or to become due.' From that situation the pension money of plaintiff in error had departed."

Section 22 World War Veterans' Act, 1924, c. 320, 43 Stat. 607, 613 (38 U. S. C. A. sec. 454), repealed by Act August 4, 1935, provided—

"That the compensation, insurance, and maintenance and support allowance payable under Titles II, III, and IV, respectively, shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is made under Titles II, III, or IV; and shall be exempt from all taxation: *Provided*, That such compensation, insurance, and maintenance and support allowance shall be subject to any claims which the United States may have, under Titles II, III, IV, and V, against the person on whose account the compensation, insurance, or maintenance and support allowance is payable. . . ."

Trotter v. *Tennessee*, (1933) 290 U. S. 354, 356-357, construed this section. A veteran had purchased land in Tennessee with money received as compensation, and claimed exemption from taxation. We said—

"The moneys payable to this soldier were unquestionably exempt till they came into his hands or the hands of his guardian. McIntosh v. Aubrey, 185 U. S. 122. We leave the question open whether the exemption remained in force while they continued in those hands or on deposit in a bank. . . . Be that as it may, we think it very clear that there was an end to the exemption when they lost the quality of moneys and were converted into land and buildings. The statute speaks of 'compensation, insurance, and maintenance and support allowance payable' to the veteran, and declares that these shall be exempt. We see no token of a purpose to extend a like immunity to permanent investments or the fruits of business enterprises."

In 1935 Congress gave much consideration to the exemption which should be accorded to veterans. The outcome is shown by sections three and five Act August 12, 1935 *ante*.

Section three of that Act came under review in *Lawrence* v. *Shaw*, (1937) 300 U. S. 245, 249-250. Exemption was successfully claimed for bank deposits standing in the name of a veteran's guardian upon the view that such deposits, made in the ordinary course and subject to demand for the veteran's use, should be treated as if money in his hands.

"The World War Veterans' Act, 1924, provided that the compensation and insurance allowances should be 'exempt from all taxation.' The Act of 1935 is more specific, providing that the payments shall be exempt from taxation and shall not be liable to process 'either before or after receipt by the beneficiary.' There was added the qualification that the exemption should not extend 'to any property purchased in part or wholly out of such payments.' This more detailed provision was substituted for that of the earlier Act and was expressly made applicable to payments theretofore made. We think it clear that the provision of the later Act was intended to clarify the former rather than to change its import and it was with that purpose that it was made retroactive. . . . The provision of the Act of 1935 that the exemption should not apply to property purchased out of the moneys received from the Government shows the intent to deny exemption to investments, as was ruled in the *Trotter* case."

The questioned judgment must be affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.